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EXAMINER
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ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/935,365

Applicant(s)

Roberts et al.

Examiner

Marianne S. Ocampo

Group Art Unit

1723



☒ Responsive to communication(s) filed on Sep 22, 1997

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-27 are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Sep 22, 1997 is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Group I, claims 1 and 18, drawn to a subcombination being that of an under drain block member , classified in class 52, subclass 503.
  - II. Group II, claims 8 and 16, drawn to a combination of species being that of a filtration system comprising a filter media bed and an under drain block member, classified in class 210, subclass 288.
  - III. Group III, claim 20, drawn to a process or method for making an under drain block , classified in class 264 , subclass 632.
  - IV. Group IV , claim 24, drawn to a process or method of using a product for filtering such that of an under drain block in a filtration system which comprises a filter basin, classified in class 210, subclass 767.
  - V. Group V, claims 26 and 27, drawn to processes or methods of using a product for improving flow distribution such that of in an under drain block, classified in class 137, subclass 314.

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2. The inventions are distinct, each from the other because:

3. Group inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the under drain block being claimed in instant claims 1 and 18, while the subcombination has utility by itself, in that said under drain block comprised in an under drain system of a liquid filtration system can be used to provide support for and transport effluent from any type of filtration media structure therethrough.

4. Group inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed in instant claim 20, which is a method of making an under drain block for construction of an under drain system, can be used to make a materially different product such as an under drain block having a lower and an upper walls, a lateral member defining two chambers within said block, orifices therethrough and passages to connect said under drain system with a flume.

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5. Group inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process as claimed in instant claim 24, which is a process or method of filtering wherein a plurality of under drain blocks are being used to transport effluent away from the filtration system, can be used in a materially different process such as a supporting block for a filter media bed or multi-layer filter media.

6. Group inventions I and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed in instant claims 1 and 18, which is an under drain block, can be used in a materially different process besides that of the process of using in instant claims 26 and 27, such that of a member in a filtration system for filtering an influent therethrough.

7. Group inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as

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claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process of making in instant claim 20 is used to make a materially different product such as an under drain having a lower and an upper walls, at least one lateral member, and orifices on its lower wall and lateral member, which is materially different from an under drain block member claimed in instant claims 8 and 16.

8. Group inventions II and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process claimed can be practiced with another materially different product such as a filter media bed or multi-layer filter media, instead of a filter basin as claimed in instant claim 24.

9. Group inventions II and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are a filtration system having an under drain member located underneath a

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bed of filter media as being claimed in instant claims 8 and 16, and a process or method for improving the flow distribution in a multi-tier under drain system.

10. Group inventions III and IV are related as process of making and process of using the product. The use as claimed cannot be practiced with a materially different product. Since the product is not allowable, restriction is proper between said method of making and method of using. The product claim will be examined along with the elected invention (MPEP § 806.05(I)).

11. Group inventions III and V are related as process of making and process of using the product. The use as claimed cannot be practiced with a materially different product. Since the product is not allowable, restriction is proper between said method of making and method of using. The product claim will be examined along with the elected invention (MPEP § 806.05(I)).

12. Group inventions IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are two different processes having a different modes of operation and functions and /or effects, for example, one by using an under drain block in a filtration system to support a bed of filter media and the other is to transport effluent therethrough.

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13. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

14. Furthermore, because these inventions are distinct for the reasons given above and the search required for a predetermined group is not required for another group, restriction for examination purposes as indicated is proper.

15. This application contains patently distinct species as follows:

species 1 including a subcombination being that of an under drain block for an under drain system in a liquid filtration system;

species 2 including a combination of a liquid filtration system comprising a bed of filter media and an under drain block.

16. This application contains claims directed to the following patentably distinct species of the claimed invention:

claims 1 - 7, 18 - 19 and 20 - 23 corresponds to species 1;

claims 8 - 17 and 24 - 27 corresponds to species 2.



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17. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

18. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

19. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

20. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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21. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

22. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne S. Ocampo whose telephone number is (703) 305-1039. The examiner can normally be reached on Monday - Friday from approximately 7:00AM - 3:30PM.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker, can be reached on (703) 308-0457.

25. The fax phone number for **Unofficial** faxes (i.e. faxes not to be entered, drafts) for Technology Center 1700 is **(703) 305-3602**. The fax number for **Official** faxes (i.e. faxes to become part of the file history) for this Center is **(703) 305-3599**. When filing a fax in

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Technology Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

26. Any inquiry of a general nature or relating to the status for this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*W. L. Walker*  
W. L. WALKER  
PRIMARY EXAMINER  
GROUP 1300

*MGO*  
M. S. O.

January 13, 1999